

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	File No. EB-00-TC-005
NOS Communications, Inc. and	)	NAL/Acct. No. 200132170011
Affinity Network Incorporated	)	FRN 0004942538
	)	
Apparent Liability for Forfeiture	)	

**ORDER**

**Adopted: December 20, 2002**

**Released: December 26, 2002**

By the Commission:

1. The Commission has been conducting an investigation into potential violations by NOS Communications, Inc. (“NOS”) and Affinity Network Incorporated (“ANI”)<sup>1</sup> of Section 201(b) of the Communications Act of 1934, as amended (the “Act”).<sup>2</sup> The investigation focused on whether NOS and ANI willfully or repeatedly engaged in unjust and unreasonable practices in connection with their provision of interstate communication services in violation of Section 201(b) of the Act. On April 2, 2001, the Commission issued a Notice of Apparent Liability<sup>3</sup> finding that, by apparently failing to disclose clearly and conspicuously material facts regarding their promotional plan offerings and call unit pricing methodology, the companies had apparently engaged in the deceptive marketing of their interstate communication services in apparent violation of Section 201(b) of the Act.

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<sup>1</sup> NOS, is a Maryland corporation, whose principal address is 4380 Boulder Highway, Las Vegas, NV 89121. NOS also conducts business under the following business names: International Plus, O11, INETBA (or Internet Business Association), and I-Vantage. ANI is a California corporation, whose principal address is 3660 Wilshire Boulevard, Suite 400, Los Angeles, CA 90010. ANI also conducts business under the business names HorizonOne Communications (“HorizonOne”) and QuantumLink Communications (“QuantumLink”). All of the entities identified herein have in common either the same principals or officers. For purposes of this NAL, the term “NOS” or the term “ANI” (collectively “companies”) includes all of NOS’s and ANI’s respective identified entities, including any of their respective successors or assigns.

<sup>2</sup> 47 U.S.C. §§ 251, 271.

<sup>3</sup> *NOS Communications, Inc. and Affinity Network Incorporated*, Notice of Apparent Liability, 16 FCC Rcd 8133 (2001).

2. The Commission, NOS, and ANI have negotiated the terms of a Consent Decree that will terminate this investigation. A copy of the Consent Decree is attached hereto and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree.

4. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 503(b), that the Consent Decree, incorporated by reference in and attached to this order, is hereby ADOPTED.

5. IT IS FURTHER ORDERED that the Secretary SHALL SIGN the Consent Decree on behalf of the Commission.

6. IT IS FURTHER ORDERED that the above captioned investigation IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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**CONSENT DECREE**

**I. INTRODUCTION**

1. The Federal Communications Commission (the "FCC" or the "Commission"), NOS Communications, Inc. ("NOS") and Affinity Network Incorporated ("ANI") (together, "the Companies"), by their counsel and authorized representatives, hereby enter into this Consent Decree to resolve an investigation (the "Investigation") by the Commission arising out of consumer complaints alleging that NOS and ANI engaged in the deceptive marketing of their interstate communication services by failing to disclose clearly and conspicuously material facts regarding their call unit pricing methodology and promotional plan offerings.

2. On April 2, 2001, the Commission, following an investigation, issued a Notice of Apparent Liability ("NAL").<sup>1</sup> The NAL found that the companies' marketing practices apparently misled consumers about the fact that quoted cents-per-minute rates were promotional, apparently failed to inform consumers that a different, call unit pricing plan would apply after the promotional period, and apparently failed to inform consumers how the non-promotional call unit pricing plan would operate. The NAL found that NOS and ANI apparently engaged in unjust and unreasonable marketing practices in violation of section 201(b) of the Communications Act of 1934, as amended (the "Act").<sup>2</sup> On May 2, 2001, the Companies filed their "Response to the Notice of Apparent Liability for Forfeiture" ("Joint Response") wherein they responded to the allegations contained in the NAL.

**II. DEFINITIONS**

3. For the Purposes of this Consent Decree, the following definitions shall apply:
- (a) "NOS" or the "Company" means NOS Communications, Inc., all d/b/a and plan

<sup>1</sup> *In the Matter of NOS Communications, Inc. and Affinity Network Incorporated*, Notice of Apparent Liability, 16 FCC Rcd 8133 (2001) (NOS/ANI NAL).

<sup>2</sup> 47 U.S.C. § 201(b).

entities of the company, including International Plus, 011 Communications, INETBA (or Internet Business Association), I-Vantage Network, Cierracom Systems, and any entity owned, directed or controlled by the company, including all subsidiaries, commonly-owned inter-exchange affiliates, concurring carriers, successors, and assigns.

(b) "ANI" or the "Company" means Affinity Network, Inc., all d/b/a and plan entities of the company, including HorizonOne Communications and Quantum Link Communications, and any entity owned, directed or controlled by the company, including all subsidiaries, commonly-owned inter-exchange affiliates, concurring carriers, successors, and assigns.

(c) "The Companies" means NOS and ANI.

(d) The "FCC" or the "Commission" means all Bureaus and Offices of the Commission, including the Enforcement Bureau.

(e) "Parties" means NOS, ANI, and the FCC.

(f) "Adopting Order" means an Order of the Commission adopting the terms and conditions of this Consent Decree.

(g) "Effective Date" means the date on which the Commission adopts the Adopting Order.

(h) "Final Order" means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.

(i) Notice of Apparent Liability ("NAL") means the NAL adopted on March 28, 2001 and released on April 2, 2001, *In the Matter of NOS Communications, Inc. and Affinity Network Incorporated, Apparent Liability for Forfeiture*, 16 FCC Rcd 8133.

(j) "Investigation" means the investigation commencing with the letter of inquiry issued by the Enforcement Bureau to NOS and/or ANI on September 14, 2000, EB-00-TC-005, and leading to the issues specified in the NAL or resolved in this Consent Decree concerning the Companies' marketing, advertising, and sale of their call unit promotional and non-promotional interstate communications services. Investigation includes only those marketing, advertising, and sales practices specified or referenced in the NAL as reflected in the Companies' rate sheets and Letters of Agency ("LOAs").

(k) "Customer" means an authorized consumer (person, a natural person, individual, governmental agency or entity, partnership, corporation, limited liability company or corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized) offered, receiving, or previously receiving inter-exchange services from the Companies.

(l) “Marketing Personnel or Marketing Employee” means all current and future NOS and ANI employees and agents involved with the marketing, sales, and customer service of the Companies’ call unit promotional and non-promotional interstate communications services, including customer service, sales, and telemarketing representatives, managers, supervisors, and agents.

(m) “Call Unit” means the pricing methodology whereby call length is measured in units determined by Minimum Call Units, Incremental Call Units, Equivalent Call Units, and Total Call Units rather than minutes.

(n) “Promotional Plan” means any rate plan where temporary rates apply for a set period, including plans which convert from a cents per minute or any minute pricing methodology to the call unit pricing methodology after a temporary period.

(o) “Deceptive” means a misrepresentation, omission, or other practice that is likely to mislead the consumer acting reasonably in the circumstances to the consumer’s detriment.

### **III. AGREEMENT**

4. The Companies represent and warrant that they are the properly named parties to this Consent Decree and are solvent and have sufficient funds available to meet fully all financial and other obligations set forth herein. The Companies further represent and warrant that they have caused this Consent Decree to be executed by their authorized representative, as a true act and deed, as of the date affixed next to said representative’s signature. Said representatives and the Companies respectively affirm and warrant that said representative is acting in his/her capacity and within his/her authority as a corporate officer of the Companies, and on behalf of the Companies and that by his/her signature said representative is binding the Companies to the terms and conditions of this Consent Decree. The Companies also represent that they have been represented by counsel of their choice in connection with this Decree and are fully satisfied with the representation of counsel.

5. The Companies represent and warrant that they shall not effect any change in their form of doing business or its organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Decree or the obligations of this Decree.

6. NOS and ANI admit that the FCC has jurisdiction over them and the subject matter of this action for the purposes of this Consent Decree.

7. The parties agree that this Consent Decree does not constitute either an adjudication of the merits, or any factual or legal finding or determination of noncompliance by the companies with the requirements of the Act, as amended, or with the Commission’s Rules.

The Parties agree that this Consent Decree is for settlement purposes only and that, by agreeing to this Consent Decree, the Companies do not admit or deny any noncompliance, violation, or liability associated with or arising from any alleged actions or failures, including any problems or failures described in the letters of inquiry or the NAL, or in any informal complaints, or other information the Commission received concerning the companies' purported deceptive marketing and sale of their call unit promotional and non-promotional interstate communications services that allegedly occurred prior to the Effective Date.

8. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Investigation and resolve the NAL.

9. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation. The FCC will not initiate on its own motion any other enforcement action against the companies based on this Investigation, or seek on its own motion any administrative or other penalties from the Companies based on this Investigation.

10. The Commission agrees that, in the absence of material new evidence related to these matters, it will not use the facts developed in this Investigation to institute, on its own motion, any new proceedings, formal or informal, or to take any actions on its own motion against the Companies concerning the matters that were the subject of this Investigation. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed pursuant to sections 208 of the Communications Act, as amended,<sup>3</sup> and to take any action in response to such complaint.

11. The Companies will make a voluntary contribution (not a fine or penalty) to the United States Treasury in the amount of \$1 million dollars (\$1,000,000) within 10 calendar days after the Commission Order adopting this Consent Decree becomes final. The Companies must make this payment by check, wire transfer or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer or money order should refer to "NAL Acct. No. 200132170011." If the Companies make this payment by check or money order, they must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. If the Companies make this payment by wire transfer, they must wire such payment in accordance with Commission procedures for wire transfers.

12. The Companies waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

13. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Commission through incorporation of such provisions by reference in an

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<sup>3</sup> 47 U.S.C. § 208.

Adopting Order of the Commission, which shall immediately terminate the Investigation.

14. The Company's decision to enter into this Consent Decree is expressly contingent upon issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

15. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. If the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Adopting Order, neither the Companies nor the Commission will contest the validity of the Consent Decree or Adopting Order, and the Companies will waive any statutory right to a trial *de novo*.

17. The Companies waive any rights they may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.150 *et seq.*

18. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

19. The Companies represent and warrant that neither the Companies nor any of their representatives, employees, agents or any other person acting under, by, through, or on behalf of the Companies, directly or indirectly, or through any corporate or other device, shall state, represent or imply that the FCC, or any other governmental unit or subdivision thereof, approved or authorized any practice, act, advertisement or conduct of the Companies as a result of this Consent Decree, other than the standards and actions set forth in this Decree.

20. The Companies agree that, with regard to the marketing/advertising, sale, or customer service of any call unit promotional or non-promotional interstate communications service, and beginning no later than 30 days after the Effective Date, the Companies will:

(a) Make only those representations concerning rates or other material facts which the Companies know or reasonably believe to be true and accurate.

(b) Represent or imply at time of sale that rates are in minutes or cents per minute only where such is the case during and beyond any promotional period.

(c) Market or promote only in a manner which is consistent with and which accurately represents the Customer's rates during and beyond any promotional period, and in a manner which is appropriate for reasonable understanding by a Customer to which the plan is offered.

(d) Concerning a call unit promotional rate plan, clearly and conspicuously indicate that the initial rate is promotional, specify the basis on which future charges will be billed after

the promotional period ends, and state the duration of the promotional period.

21. The Parties agree that the terms of the incorporated Call Unit Marketing and Sales Compliance Program are a binding part of this Consent Decree.

22. In addition to the Call Unit Marketing and Sales Compliance Program, NOS and ANI agree to implement within thirty (30) days of the Effective Date the following measures with regard to any written materials which market/advertise or promote the Companies' call unit promotional and non-promotional interstate communications services:

(a) All written marketing materials concerning a call unit promotional or non-promotional rate plan will make only those representations concerning rates or other material facts which the Companies know or reasonably believe to be true and accurate.

(b) All written marketing materials concerning a call unit promotional rate plan will clearly and conspicuously indicate that the initial rate is promotional, specify the basis on which future charges will be billed after the promotional period ends, and state the duration of the promotional period.

(c) All written marketing materials concerning a call unit promotional rate plan which advertise a promotional rate in cents-per-minute but which will be subsequently billed in call units following the end of the promotional period will clearly and conspicuously disclose the call unit pricing methodology.

(d) All written marketing materials concerning any call unit rate plan, promotional or non-promotional, will clearly and conspicuously disclose the call unit pricing methodology. Without limitation, the materials will comply with the following:

i. All print or visual disclosures modifying a rate claim will be made in reasonable proximity to the claim being modified.

ii. All print or visual disclosures modifying a rate claim will be made in a color, shade, or manner that readily contrasts with the background of the advertisement.

iii. All print or visual disclosures modifying a rate claim will be made in a clear and conspicuous manner and font-type size.

iv. All print or visual disclosures modifying a rate claim will be made in plain English (or foreign language if marketed or sold in a foreign language) that is readily understandable to the average consumer. Any technical language or industry terms of art must be explained clearly.

23. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation, that provision will be superseded by such Commission rule or order.



24. By this Decree, the Companies do not waive or alter their right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of the Companies' compliance efforts under this Agreement, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Decree and no waiver of such privileges is made by this Agreement.

25. This Consent Decree may be signed in counterparts.

#### IV. CALL UNIT MARKETING AND SALES COMPLIANCE PROGRAM<sup>4</sup>

26. The Parties agree that the terms and conditions of this Call Unit Marketing and Sales Compliance Program shall remain in effect for thirty-six (36) months from the Effective Date.

27. Prior to causing the dissemination or use of any marketing, advertising, sales, training, or policy materials concerning the marketing or sale of their call unit promotional and non-promotional interstate communications services, the Companies will submit same to legal counsel of their own designation for review, editing, and approval to ensure compliance with this Consent Decree and all applicable federal and state laws. Said counsel must have experience with consumer protection laws, including the law relating to fraudulent, deceptive, unconscionable and unfair acts or practices, and state and federal rules and statutes relating to telecommunications.

28. Within 30 days of the Effective Date, NOS and ANI will adopt and implement, through legal counsel of their own designation, a written Call Unit Marketing and Sales Compliance Program (the "Program"). Said counsel must have experience with consumer protection laws, including the law relating to fraudulent, deceptive, unconscionable and unfair acts or practices, and state and federal rules and statutes relating to telecommunications.

29. The Program will include, but is not limited to, the following components:

(a) **Copies of Consent Decree to Prospective Successors or Assigns:** Prior to any sale, dissolution, reorganization, assignment, merger, acquisition or other action that would result in a successor or assign for the marketing, advertising, sale, or provision of the Companies' call unit promotional or non-promotional interstate communications services, the Companies will furnish a copy of this Consent Decree to such prospective successors or assigns and advise same of their duties and obligations under this Decree.

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<sup>4</sup> This Call Unit Marketing and Sales Compliance Program incorporates Section II: Definitions from the Consent Decree.

(b) **Notice of Consent Decree Requirements to Officers, Directors, Managers, and Employees:** The Companies will be responsible for making the substantive requirements and procedures set forth in this Consent Decree known to their respective directors and officers, and to managers, employees, agents, and persons associated with the Companies who are responsible for implementing the obligations set forth in this Decree. The Companies will, within thirty (30) days of the Effective Date, deliver to each of their current directors and officers, and to all managers, employees, agents, and persons associated with the Companies having sales, marketing/advertising, operational or customer service responsibility ("Marketing Personnel" or "Marketing Employee") with respect to the Companies' call unit promotional and non-promotional interstate communications services, written instructions as to their respective responsibilities in connection with the Companies' compliance and obligations under this Decree. The Companies will distribute said instructions to all of their future directors and officers wherever located, and to all future managing Marketing Personnel.

(c) **Call Unit Marketing, Sales, and Customer Service Code of Conduct:** The Company will establish a Call Unit Marketing, Sales, and Customer Service Code of Conduct (the "Code"), which will be reviewed and signed by all current NOS and ANI Marketing Personnel. As part of their initial training, each new Marketing Employee will also sign the Code. All Marketing Personnel will reaffirm annually, in writing, that they have recently reviewed, and fully understand, the Code. The Code will establish a strict quality standard, to which all Marketing Personnel will be required to adhere. The Code will establish that all Marketing Personnel shall: (1) make only true and accurate representations concerning the call unit pricing methodology and rate plans, whether promotional or non-promotional; and (2) make no misrepresentations or material omissions to consumers or otherwise mislead or imply that cents per call unit billing is the same or equal to cents per minute or minute billing. The Code also will establish that any written materials which market or promote the Companies' call unit promotional and non-promotional interstate communications services shall: (1) make only true and accurate representations concerning the call unit pricing methodology and rate plans, whether promotional or non-promotional; and (2) make no misrepresentations or material omissions to consumers or otherwise mislead or imply that cents per call unit billing is the same or equal to cents per minute or minute billing.

(d) **Mandatory Quality Training:** All Marketing Management Personnel will be required to attend a comprehensive supplemental training session regarding the Program and the Code. Such training sessions will be repeated annually for all Marketing Management Personnel, at which time they again will be required to sign the Code, acknowledging their understanding of its requirements and verifying their intent to comply with them.

(e) **Complaints:** As of the Effective Date, NOS and ANI will promptly and in good faith address and resolve all complaints regarding the marketing and sale of their call unit promotional and non-promotional interstate communications service in a reasonable manner consistent with this Consent Decree and the Program. In all cases where the Companies conclude that intentionally deceptive conduct occurred by an employee or agent, the Companies will take appropriate disciplinary action against the employee or agent in question, consistent with the standards set forth in the Program.

(f) **Reporting:** Within 60 days from the Effective Date, the Companies will provide a formal report to the Bureau of their progress in implementing the Program. At the request of the Bureau, during this initial 60-day period following the Effective Date, the Companies also will provide informal status reports on the implementation of the Program.

(g) **Program Changes:** Should NOS and/or ANI wish to make any changes to the Program outlined in paragraphs 26-29 above during the term of this Decree, they must submit the proposed change in writing to the Enforcement Bureau no later than 30 days before the proposed adoption of the change. Within 30 days of receipt of any proposed change to the Program, the Enforcement Bureau shall advise the Companies whether it objects to the proposed change. Within 10 days of receiving any objection from the Enforcement Bureau, NOS and ANI shall be permitted to present for the Bureau's consideration further justification for the proposal. Should the Bureau fail to object expressly to the proposed change within the 30-day time period, the Companies shall be free to implement it.

FEDERAL COMMUNICATIONS COMMISSION

By: \_\_\_\_\_  
Marlene Dortch  
Secretary

NOS Communications, Inc./Affinity Network, Inc.

By: /s/ Michael W. Arnau  
Michael W. Arnau  
Chief Executive Officer